IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 12 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

HANSABEN UMABHAI FAMILY TRUST

Appearance:

MR AKIL KURESHI for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 18/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Revenue, following question of law has been referred to this Court for opinion in respect of Assessment Year 1978-79 :

"Whether, on the facts and in the circumstances of the case, the provisions of section 164 of the Income-tax Act, 1961 could be applicable in the case of the assessee ?"

2. Though served, no one appears on behalf of the respondent-assessee.

3. We have heard the learned counsel for the Revenue. Our attention has been drawn to judgment delivered by this Court in the case of CIT v. HANSABEN UMABHAI FAMILY TRUST (this very assessee) in Income Tax Reference No. 15 of 1983 decided on August 29, 1996, wherein it is held that the assessee Trust is a specific Trust and not discretionary and, therefore, the provisions of section 164 of the Act are not applicable. We may state that the decision quoted above has been relied upon in the case of this very assessee in I.T.R. No. 137 of 1985 decided by Division Bench comprising Hon'ble the Chief Justice and Mr.Justice A.R.Dave on October 17, 2000. In view of the above referred to two decisions, we are of the opinion that the provisions of section 164 of the Act would not be applicable in the case of the assessee. The Reference is, therefore, answered in the negative i.e. in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of with no order as to costs.

(J.M.Panchal, J.)

(M.S.Shah, J.)